IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No. 93 of 1990

Date of decision 4.4.2007

The Commissioner of Income Tax, Patiala .. Applicant

Versus

M/s Kuldip Industrial Corporation, Chandigarh .. Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: Mr.Vivek Suri, Advocate for the petitioner

Mr. Rajesh Garg, Advocate for the revenue.

M.M.Kumar, J.

This Court while deciding ITC Nos. 88 and 89 of 1986 on 26.9.1988 (CIT Patiala v. M/s Kuldip Industrial Corporation Chandigarh) had issued directions under Section 256(2) of the Income Tax Act, 1961 (for brevity 'the Act') to the Income Tax Appellate Tribunal (for short 'the Tribunal') revenue to refer the following questions of law for the opinion of this Court:

i) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the CIT (Appeals) could under Section 250(4) of the IT Act,1961 admit evidence of the death of Smt. Darshna Devi without giving any opportunity to the Income tax Officer to rebut the same are required under Rule 46A of the Income tax Rules, 1962;

ii) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the Income tax Officer was given reasonable opportunity to examine/ rebut the evidence in the form of a death certificate of Smt. Darshna Devi;

iii) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the finding of the CIT (Appeals) regarding genuineness of the firm was not questioned before the Appellate Tribunal;

iv) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that Smt. Darshna Devi could not be said to be the same person as Smt. Darshna Gupta of Ambala;

v) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in in the absenceof any evidence whatsoever, in holding that the said Smt. Darshna Devi whose death certificate was relied upon by the assessee was same who was a partner of the assessee firm for the assessment year 1975-76; and

vi)Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that a genuine firm was in existence for assessment year 1975-76?"

Questions similar to one as are raised above, were considered by this Court in assessee's own case in ITR No. 77 of 1990 decided by a separate order passed today and have been answered against the revenue.

For the reasons recorded in ITR 77 No. of 1990, the questions

referred are answered also decided against the revenue and in favour of the assessee.

The reference is disposed of accordingly.

(M.M.Kumar)
Judge

(Rajesh Bindal)
Judge

4.4.2007
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